

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 722 of 1986

with

CRIMINAL APPEAL No 723 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RANCHHODBHAI MAGANBHAI

Appearance:

1. Criminal Appeal No. 722 of 1986
MR K.P.SHAH APP for Petitioner No. 1
MR JM PANCHAL for Petitioner No. 1
MR YU MALIK for Respondent No. 1-4
-

CORAM : MR.JUSTICE D.P.BUCH

and

MR.JUSTICE H.H.MEHTA

Date of decision: 25/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The present two appeals have been filed by the State of Gujarat against the judgement and order dated 31st March 1986 recorded by the learned Additional Sessions Judge, City Sessions Court at Ahmedabad, in Sessions Case No.97 of 1985.

2 It seems that the aforesaid Sessions Case was conducted against four accused persons for offences punishable under Sections 302, 324 read with Section 34 and 114 of IPC, etc. The case of the prosecution before the trial Court maybe briefly stated as follows:-

3 That on 6th August 1984 at about 7.30 PM the original informant Natwar Jalu was sitting in his slum quarter being Slum Quarter No.195 in Chamanpura area of Ahmedabad. At that time his younger brother's wife Jijiben had come to his residence and told that Naginbhai Ranchhodbhai being the son of appellant Ranchhodbhai Maganbhai had teased said woman who was pregnant at the relevant point of time by using words as to when the cylinder was likely to come out. Therefore, the informant Natwar Jalu had gone to the residence of accused Ranchhodbhai. At that point of time Naginbhai Ranchhodbhai got angry and started abusing Natwarbhai Jalubhai. That in the meantime accused Ranchhodbhai and Chanchiben Ranchhodbhai supported accused Nagin and started abusing informant Natwar Jalubhai. That the informant told him not to abuse him and at that time accused Ranchhod dealt a pipe blow on the face of informant Natwarbhai and accused Vithal and Chanchiben gave him fist and kick blows. That in the meantime informant's uncle Lalubhai Rambhai also arrived and tried to intervene. At that time accused Ranchhod dealt a pipe blow on his head and accused Nagin dealt Gupti blow on the abdomen of Lalubhai Ramabhai. That one Magan and other neighbours intervened and therefore the incident was over and the said four accused had run away.

4 In the meantime many persons from the neighbourhood had gathered together and the injured persons were shifted to the Civil Hospital. The first information report of the informant was recorded and the statement of Lalu Ramabhai was also recorded. That two days thereafter Lalu Ramabhai succumbed to the injuries in the hospital itself and therefore an offence punishable under Section 302 of the IPC was also added. The investigation was undertaken by PSI Mr Chavda and at the conclusion of the investigation charge-sheet was

filed for the offences punishable under Sections 302, 324 of the IPC against those four accused persons before the learned Metropolitan Magistrate, Court No.17, Ahmedabad.

5 Since the offence punishable under Section 302 of the IPC was exclusively triable by the Court of Sessions, the said case was committed to the Court of Sessions. The learned Additional Sessions Judge, in-charge of the case, supplied copies of the police investigation papers to the said four accused persons. The charge was prepared and framed against the said four accused persons. They all pleaded not guilty. Therefore, evidence was recorded. At the conclusion of the evidence, further statements of the accused were recorded under Section 313 of the Criminal Procedure Code, 1973 (for short, "Code"). Arguments were heard and thereafter the learned trial Judge found that accused Ranchhod and accused Nagin had committed offences and therefore the learned trial Judge convicted accused Ranchhod for an offence punishable under Section 324 of the Indian Penal Code whereas accused Nagin was convicted for an offence punishable under Section 304 Part II of the Indian Penal Code. Remaining accused was acquitted of all the charges levelled against them.

6 After hearing the said accused persons on the quantum of punishment and after calling for and perusing the reports from the probation officer, the learned trial Judge granted the benefit of probation to accused no.1 and directed him to be released on probation for a period of two years on furnishing bail bond and security in a sum of Rs.1,000/-.

7 On the other hand, accused Nagin was also released on probation for a period of two years on his executing P.R. and surety bond in a sum of Rs.2,000.

8 The learned trial Judge also directed that accused Nagin shall remain under supervision of the Probation Officer for a period of two years.

9 Feeling aggrieved by the said judgement and order of the trial Court, the State has preferred two separate appeals before this Court. Criminal Appeal No.722 of 1986 has been filed by the State of Gujarat against all the four accused persons under Section 378 of the Code for the conviction of all the accused persons for an offence punishable under Section 302 of the IPC read with Section 34 thereof. Criminal Appeal No.723 of 1986 has been filed by the State of Gujarat under sub-section (1) of Section 11 of the Probation of Offenders Act, 1958

against Ranchhodbhai Maganbhai and Naginbhai Ranchhodbhai with a prayer that these two accused persons should be sentenced with imprisonment instead of extending the benefit of probation under Probation of Offenders Act, 1958.

10 It seems that the original informant had also filed Criminal Revision Applications before this Court being Criminal Revision Applications Nos.270 of 1986 and 271 of 1986. However, an order was passed on those revision applications by this Court that in view of the orders passed in Criminal Appeal No.722 and 723 of 1986, no order on the said Criminal Revision Applications. This clearly means that the said Criminal Revision Applications do not stand and they are not alive. Therefore, it is not necessary to deal with those two revision applications.

11 Since Criminal Appeal No.722 of 1986 and 723 of 1986 have been directed against one and the same judgement and order of the trial Court, it would be appropriate to deal with them simultaneously. Even the learned advocates for the parties have advanced common arguments for both the appeals. Therefore also it would be appropriate to deal with them simultaneously and dispose of them by this common judgement.

12 As stated above, the prosecution case before the trial Court was to the effect that Jijiben, wife of the brother of the informant, had complained that respondent Nagin (original accused) had made a comment as to when the cylinder was to come out. Indisputably, Jijiben was pregnant at the relevant point of time and therefore this would amount to an indecent observation or gesture or comment on the part of respondent Nagin. Therefore, Jijiben felt offended and made a complaint to the informant and his mother. At that point of time the informant went to scold Nagin and in the process there was some exchange of words between two groups. During the said exchange of words the present incident took place in which Ranchhod dealt a pipe blow on the informant and Nagin dealt a Gupti blow on the abdomen of deceased - informant's uncle Lalubhai Rambhai who arrived there and tried to intervene. Both of them had sustained injuries. They were taken to the hospital but Lalubhai Rambhai succumbed to the injuries sustained by him at the hands of the respondent - Nagin Ranchhodbhai by means of gupti.

13 So far as the evidence is concerned, the prosecution has examined all those witnesses including

Jijiben, informant and others. The trial Court has accepted the evidence and has found the respondent Ranchhod and Nagin guilty for offences punishable under Section 324 and 304 Part II of IPC respectively. The other two accused persons have been acquitted. A short question would arise as to whether it could be said that there was an offence of murder committed by all the respondents and whether the punishment of grant of probation is proper and legal.

14 So far as the acquittal appeal is concerned, it is the case of the prosecution that four accused persons had committed an offence punishable under Section 302 of IPC and therefore the trial Court has committed a serious error in not convicting the four respondents for an offence punishable under Section 302 of IPC.

15 Learned A.P.P. Mr Shah has argued the matter on behalf of the State at a great length stating that there was sufficient material on record to show that the accused had a common object to commit offence of murder of deceased and therefore the trial Court ought to have convicted the four respondents for an offence punishable under Section 302 of the IPC.

16 If we consider the evidence on record, we can look to the evidence of the eye witness Natwarbhai Jalubhai, Exh.15, the informant and injured eye-witness. He had narrated the story as has been described hereinabove. Jijiben had come to his residence and had made a complaint about indecent comment made by respondent Nagin. He has also deposed that he had gone to scold Nagin and at that time Nagin and Ranchhod both started abusing him and therefore he told them not to abuse him and at that time all the four accused persons had started abusing him and had also started giving him kick and fist blows. That at that time Ranchhod brought an iron pipe and dealt a blow with the said iron pipe on his face. That a second blow was dealt on the neck. That one more blow was dealt on his right leg which fell on his knee.

17 Therefore, according to the evidence of this witness he had received 3-4 blows of iron pipe on his person.

18 If we look to the FIR, exh.22 filed by this witness Natwar Jalubhai, at page 70 we can find that he has stated in the FIR that Ranchhod Magan had dealt pipe blows on his face as well as on his forehead.

19 Then we can turn to evidence of Dr Harshadrai, exh.23 at page 73. With respect to injury sustained by informant Natwarbhai the witness had deposed that the informant had a CLW on the right side of his upper lip 1.5 cm x 2.5 cm x skin deep. The witness has further stated that the informant had a CLW of 2 cm x 1.5 cm on the left side of his neck.

20 The witness has further stated that the informant had a complaint of pain on the front part of his left knee.

21 If we look to the evidence of the informant and the evidence of this Medical Officer then, we can find that there is apparent contradiction between the evidence of these two witnesses. On one hand the informant had clearly deposed that he had sustained pipe blow on his right knee. No such injury has been noticed on his right knee by this Medical Officer. On the contrary, a complaint was made about pain on his left knee by the witness before the Medical Officer. This shows that on the one hand there was no injury mark on his knee - right or left - and on the other hand the complaint of pain was with respect to the left knee though he had received injury on his right knee. This shows that there is contradiction in the oral evidence of Natwarbhai and the Medical Officer. Then, we also find that though the witness has stated in his evidence that he had received about three injuries apart from knee injury, the Medical Officer has recorded only two injuries on his person. This would show there is apparent contradiction between medical evidence and the evidence of this injured eye witnesses.

22 It is required to be considered that the pipe used was an iron pipe and therefore each blow will provide a distinct and separate injury. When the mark of injury has not been noticed on the person of the informant it would mean that he had in fact not received the injury with iron pipe, as has been deposed by him, which would further go to show that he has not come with true facts and he does not tell the whole truth before the Court.

23 So far as the injury on the person of the deceased is concerned, there cannot be any serious dispute about the same. He did receive the said injuries and the said part of the oral evidence is supported by medical evidence.

24 However, it is a fact that the incident took place very near to the house of the accused persons. Here it is a matter of evidence that the accused persons have sustained injuries. This can be gathered from the evidence of Dr himself. Dr Harshadrai Goradiya Exh.23 page 73 has deposed in para 7 of his evidence that he had examined Ranchhod Maganbhai on the same night. That he had also brought a police yadi and on examination, the following injuries were found on the person of accused Ranchhodbhai :-

- (i) Fresh CLW 2 cm x 0.5 cm near left eye brow by the side of the nose;
- (ii) An abrasion 2 cm x 1 cm on left side of neck
- (iii) Pain with swelling on occipital region

The witness has also stated that he had also examined accused Chanchiben Ranchhodbhai at 22.30 hours on the very night. That she had also come with a police yadi and she had sustained following injuries:-

- (i) Fresh CLW 2 cm x 4 cm on right leg
- (ii) Complaint of pain on left hand
- (iii) A small abrasion on the left part of left forearm

The witness has also stated that he had examined Naginbhai Ranchhodbhai at 22.40 hours on very same night and had found following injuries on his person:-

- (i) An abrasion 4 cm x 3 cm on left hand with swelling and complaint of pain
- (ii) Complaint of pain on right forearm
- (iii) CLW 1.5 cm x 2.5 cm by skin deep on right leg

He has further stated that the X-Ray was taken in respect of injury on the left hand of accused Nagin and it was noticed that there was a fracture of radius bone.

25 The above evidence makes it clear that the above respondents did sustain fresh injuries in the same episode. Out of them at least respondent Nagin had sustained grievous hurt since it was a fracture. However, all the eye witnesses were cross-examined with respect to said injuries sustained by the said respondents. However, not a single witness has said anything about those injuries sustained by those respondents. This shows that an opportunity was given to all the eye witnesses to explain the injuries sustained

by the said respondents. However, none of the eye-witnesses has rendered a single explanation with respect to the injuries sustained by the respondents.

26 It is required to be considered that according to the medical evidence the injuries were fresh and all the respondents were examined on the same night at and after 10.30 PM. It is not a case of the prosecution that the respondent caused injuries themselves and made out a false case against the prosecution witnesses. It is required to be seen that the said evidence of the Medical Officer gets corroboration from the medical certificate issued by the very medical officer who produced the same at exh.27, 28 and 29. It is also a matter of record that Ranchhodbhai had filed the complaint against the eye witnesses. Initially, it was registered as N.C.complaint but subsequently it was noticed that it was an offence punishable under Section 324 of IPC and therefore charge-sheet was filed and the eye-witnesses were prosecuted before the trial court simultaneously. It is not much in dispute that the eye-witnesses were acquitted by the trial Court but the fact remains that there was a parallel cross case for an offence punishable under Section 324 of IPC against the eye-witnesses and a cross case had proceeded simultaneously against the eye-witnesses.

27 It is also not much in dispute that the incident took place near the house of the respondents. The incident, according to the case of the prosecution, took place since the prosecution witnesses had gone to the house of the respondents and scolded respondent Nagin. There was some exchange of hot words at the house of the respondents which resulted into the present quarrel. On one side the prosecution witnesses have sustained injuries and on the other side the respondents received injuries and one of the injuries received by a respondent was a fracture. The injuries were sustained on the parts of the bodies of the respondents, which were visible. Even despite the said position, the prosecution has not made any attempt to explain as to how and under what circumstances the said respondents sustained the said injuries.

28 Anyway, the things remain that the incident took place all of a sudden and without any premeditation. The trial Court has not considered this aspect of the case nor has held that it was not a case wherein the accused can be said to have committed an offence punishable under Section 324 of the IPC.

29 For this purpose we can refer to the provisions made in Section 300 of the IPC, which may be reproduced for ready reference as under:-

"300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or --

2ndly -- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or --

3rdly -- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or --

4thly -- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

It is true that as per clause (4) referred to above, an offence can be said to be an offence of murder if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Even the third clause also shows that a person can be said to have committed a murder if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. At the same time, it would be necessary to consider the exceptions in Section 300 of IPC. It would be worthwhile to refer to exceptions 2 and 4 for ready reference.

"Exception 2: Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law

and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence."

"Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner."

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault."

30 If we look to the aforesaid two exceptions, it would be clear that a culpable homicide would not amount to murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

31 Exception 4 also provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

32 In the present case we find that the deceased had sustained one grievous hurt on his abdomen by means of gupti. At the same time, all the respondents have sustained injuries as stated hereinabove. Out of them respondent Nagin had sustained grievous hurt in the nature of a fracture. The incident took place all of a sudden when the respondents were at their home and the eye witnesses and the deceased had gone to their place for scolding respondent Nagin. There was no previous incident between two groups. So on the one hand it was a quarrel which took place all of a sudden and in a heat of passions the present injuries have been sustained by the members of both the groups. It cannot be said that the present respondents had acted with premeditation. It also cannot be said that they have acted with an intention of doing more harm than necessary for the purpose of exercising private defence.

33 The trial Court has held that respondent Nagin had exceeded right of private defence and therefore has committed culpable homicide. At the same time, looking to the exceptions referred to hereinabove it cannot be said that the said finding recorded by the trial Court is against the weight of the evidence. Even with reference to exception no.4 again, there is no premeditation. The incident has taken place all of a sudden and the injuries have been caused in the heat of passions upon sudden quarrel. It cannot be said that the respondents have taken undue advantage or have acted in a cruel or unusual manner.

34 Considering the weapon used and considering the number of injuries sustained by the deceased, it cannot be said that the respondents have acted in an unusual manner or that they have taken undue advantage of the situation.

35 It is true that the deceased died and he died on account of injuries sustained by him by means of gupti and at the hands of respondent Nagin. But, on going through the overall evidence and surrounding circumstances, it cannot be said that respondent Nagin had an intention to cause the murder of the deceased. Had there been such an intention on the part of respondent Nagin, then, probably, he would not have dealt only one blow on the person of the deceased. The trial Court has considered that a knowledge can be attributed to respondent Nagin since he used a weapon like a gupti and inflicted a blow with gupti on vital part of the body of the deceased, i.e. abdomen. The trial Court has clearly observed that it is not a case of intentional murder. Looking to the aforesaid facts and circumstances, we are of the view that the trial Court was justified in adopting the said view and in holding that there was no premeditation or that no undue advantage was taken by respondent Nagin. The trial Court was also justified in holding that the respondent has not acted in an unusual or cruel manner.

36 Anyway, the trial Court had the advantage of watching the demeanor of the witnesses when they had tendered their evidences. Moreover, the incident has taken place near the house of the respondents where the prosecution witnesses had gone, according to their case, to scold respondent Nagin. In so doing, a fracture was caused to respondent Nagin. Considering all these aspects of the case, the trial Court has held that it was not an act of murder and consequently respondent Nagin

should not be held guilty for an offence punishable under Section 302 of the IPC.

37 Once it is found that respondent Nagin could not be held guilty for an offence punishable under Section 302 of the IPC, other respondents need not be said to be guilty for the offences alleged against them.

38 Furthermore, when respondent Nagin caused the aforesaid injury by means of gupti on the abdomen of the deceased, it could not be said that other respondents had a knowledge that respondent Nagin would cause the said injury to the deceased and the deceased would die on account of the said injury. In that view of the matter, neither Section 34 or Section 114 of the IPC can be attributed to the accused persons who have been acquitted by the trial Court. Same way, no such act could be attributed to respondent Ranchhodbhai. Therefore, while admitting the appeal against respondent Ranchhodbhai and Naginbhai, the Court had rejected the appeal qua the remaining two accused persons, namely, Chanchiben and Vithalbhai.

39 After all, so far as the acquittal appeal is concerned, it cannot be disputed that the powers of entertaining an acquittal appeal are very limited. Even if two views are possible, it would not be open to this Court, while dealing with an acquittal appeal, to easily dislodge the view recorded by the trial Court. The findings of fact recorded by the trial Court are not required to be brushed aside very lightly unless a strong case is made out.

40 In RAMESH BABULAL DOSHI Vs. THE STATE OF GUJARAT (AIR 1996 SC 2035) following observations have been made by the Hon'ble Apex Court in para 7 and 15:-

"7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence

cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.

"15. For the foregoing discussion we unhesitatingly hold that the reasons given by the trial Court for recording the order of acquittal in favour of the appellant are cogent and convincing and the High Court was not at all justified in disturbing the same by reappraising the evidence. The appeal is, therefore, allowed. The appellant, who is on bail, is discharged from his bail bonds."

41 On behalf of the prosecution the decision in the case of RAJENDRA SINGH V. STATE OF BIHAR (2000 SCC (Criminal) 796) was shown. There it has been observed that the prosecution's failure to explain the injuries on the accused cannot be held to be fatal if the evidence led by the prosecution is otherwise clear, cogent and trustworthy. It has further been observed that when the injuries sustained by the accused are not explained, non-explanation of the same would render the prosecution case suspicious. In the present case we find that the injuries sustained by the respondents and which have been proved through the evidence of the Medical Officer and when one of the injuries have been proved to be of a grievous nature, the same having not been explained by any of the prosecution witnesses though an opportunity was given to them by specifically putting a question to them. Therefore, non-explanation of the injuries would lead to an inference that the case of the prosecution has

not been proved beyond reasonable doubt and therefore at least a benefit of reasonable doubt can be extended to the respondents on the point whether the offence committed by them was one punishable under Section 302 of the IPC.

42 The decision in BHARWADA BHOGINBHAI HIRJIBHAI V/s STATE OF GUJARAT [AIR 1983 SC 753] is based upon a different principle. There the evidence of prosecutrix was required to be appreciated and it was found that the testimony of prosecutrix could be acted upon even without corroboration. It is difficult to place a case of an offence punishable under Section 376 of IPC on par with a case relating to an offence punishable under Section 302 of IPC. In the present case on hand, we find that the evidence of the witnesses has been appreciated by the trial Court in the background that the respondents-accused had sustained injuries and they were not explained by the prosecution witnesses despite opportunities given to them, as referred to hereinabove. This is not a case wherein the respondents have been outright acquitted. Two accused have been convicted and one has been convicted for an offence punishable under Section 304 Part II of IPC, instead of convicting him for the offence punishable under Section 302 of IPC. Therefore, it cannot be said that the trial Court has committed an error in appreciating the evidence and applying the law to the facts proved on record.

43 As regards the second appeal it has to be accepted that the offence with which the concerned respondents have been acquitted are the offences punishable under Section 324 and 304 Part-II of IPC. Both the offences are not punishable with imprisonment for life and therefore under Section 3 and 4 of Probation of Offenders Act, 1958 (for short, the said Act) the trial Court had the jurisdiction to extend the benefit of probation to the said two respondents.

44 It seems that after holding the respondents guilty for the aforesaid offences, the trial Court had called for the report from the Probation Officer. Those two reports are there on record and they have been duly considered by the trial Court. Both the records clearly show that the said two respondents did not have any bad antecedents against them. Details about the family and family properties have been given in the reports, the relationship of the concerned respondents have been narrated in the reports, the details about their behaviour and conduct have also been stated in the reports. It has also been stated in the reports that the

concerned respondents have now realised the seriousness of the offence and they desire to show improvement in their conduct in future. Detailed enquiry appears to have been made by the concerned Chief Probation Officer acting under the said Act and after the said enquiry reports have been submitted. Considering the aforesaid facts, we are of the view that the trial Court was right in extending the benefit of probation to respondents Ranchhod and Nagin.

45 It is also required to be considered that as far as respondent Nagin is concerned, he was 18 years of age at the time when the offence was committed. This can be gathered right from the beginning where the age of the said respondent is stated to be 18 years. Even from the facts mentioned in the report of the Probation Officer it is found that the age of respondent Nagin was 18 years at the relevant point of time.

46 It would be relevant to consider the provisions made in Section 6 of the said Act. There it has been laid down that when any person under the age of 21 years is found to be guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it should not be desirable to deal with him under section 3 or section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

47 This would clearly mean that ordinarily a person below the age of 18 years should be granted the benefit of probation under Section 3 or 4 of the said Act provided the offence said to have been committed by him is not punishable with the life imprisonment. In the present case the respondents have not committed any offence punishable with imprisonment for life. Even respondent Nagin has not committed an offence punishable with imprisonment for life. Therefore, ordinarily, it was obligatory on the part of the trial Court to extend the benefit of probation to respondent Nagin as he was below the age of 21 years at the time when the offence was committed.

48 While considering the grant of benefit of probation the trial Court was required to consider the circumstances of the case. In the present case we find that though indecent comment made by respondent Nagin was

not tolerable, at the same time, he was scolded and when the incident of hot exchange of words took place, in the heat of passion the offence was committed. There also respondent Nagin cannot be said to have taken undue advantage of the situation and he is not proved to have used a force more than what was necessary. He himself sustained injury of fracture. So far as the character of respondent Nagin is concerned, we find that the report of the Probation Officer does not disclose that respondent Nagin was of a bad character. Again, it is true that the comment made by respondent Nagin was indecent. However, respondent Nagin also comes from a class of people belonging to illiterate or semi-literate society. Sometimes, they may be lacking in education and culture. Sometimes they suffer on account of bad company also. However, the very object of enacting the said Act is to provide for the release of the offenders on probation. It is with a view to have improvement of the character so that they can re-establish themselves in their own society. Therefore, if respondent Nagin has been provided with this sort of opportunity, then, it cannot be said that the trial Court has committed an illegality and such a serious illegality that this Court should interfere with the order of the trial Court extending the benefit of probation to the respondents. It is more so when he was only 18 years of age when the offence is said to have been committed by him.

49 It is also required to be considered that while passing the said order of extending the benefit of probation, the trial Court has considered the provision made in Section 5 of the said Act which provides for grant of compensation. The trial Court has directed that an amount of Rs.5000/- shall be paid as compensation by these two respondents - Ranchhod and Nagin. It is not much in dispute that the concerned respondents have deposited the said amount before the trial Court and it is also not much in dispute that the concerned victim has withdrawn the said amount from the trial court also.

50 An attempt was made on behalf of the prosecution by Mr J.M.Panchal learned advocate appearing with the prosecution that the amount of Rs.5000/-- deposited by each respondent Nagin and Ranchhod is a meager amount and it is required to be enhanced. It is required to be considered that no amount of compensation would actually compensate the loss suffered on account of the death of deceased Lalu Ramabhai. The compensation awarded by the Court below appears to be matter of token amount. Moreover, even the respondents appear to be coming from economically and educationally backward class and looking

to their financial position also, the trial Court appears to have restricted the amount of compensation to an amount of Rs.5,000/--. In the premises, we find that order cannot be said to be illegal and therefore it would not be proper on the part of this Court to interfere with the said discretionary order to enhance the amount of compensation.

51 In the above view of the matter, it cannot be said that the trial Court has committed an error in not convicting the respondents for an offence punishable under Section 302 of the IPC read with Section 34/114 of IPC and it also cannot be said that the trial Court has committed an error in extending the benefit of probation to respondents Nagin and Ranchhod. Consequently, the prosecution has failed to establish its case in both the appeals and therefore both the appeals deserve to be dismissed.

52 The trial Court has disposed of the matter before it on 31st March 1986. As soon as the trial Court disposed of the matter, both the respondents had furnished the necessary surety bond and P.R. in accordance with Section 4 of the said Act. The said P.R. and security bond were for a period of two years only. The period has expired in the year 1988. Therefore, the concerned respondents have already undergone the entire period of punishment under Section 4 of the said Act and therefore also it is not a good case for reversing the said order.

53 So far as respondent Ranchhodbhai is concerned, he has been punished for an offence punishable under Section 324 of IPC. This offence also is not one punishable with imprisonment for life. And having regard to the facts and circumstances and looking to the injuries caused and the weapon used by him it cannot be said that the trial Court has committed an error in extending the benefit of probation to him.

54 For the foregoing reasons, both the appeals are dismissed and the judgement and order dated 31st March 1986 recorded by the learned Additional Sessions Judge, City Sessions Court at Ahmedabad, in Sessions Case No.97 of 1985 are confirmed.

(D.P.Buch, J.)

(H.H.Mehta, J.)

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